IN THE

Supreme Court of the United States

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HAROLD B. WILLEY

October Term, 1952
No. 354.

CARL E. BROWN and PAUL C. BROWN, a co-partnership, and CALIFORNIA COMPENSATION INSURANCE COMPANY,
Petitioners,

vs.

THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, LIPSMAN-FULKERSON & Co., a corporation, AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, and PAUL C. BROWN,
Respondents.

BRIEF OF PETITIONERS IN REPLY TO RESPONDENTS' BRIEF.

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Section 5952 of the Labor Code of California providing that the review of decisions of respondent Commission shall be "based on the entire record which shall be certified by the Commission" has been construed and applied in this case to allow affirmance of a decision of respondent Commission without review of the Commission's record, and without notice, hearing, or oral argument in any court of record, and thus construed and applied is in violation of the guarantees of due process and of equal protection of the laws contained in Amendment Fourteen to the Constitution of the United States 6

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BRIEF OF PETITIONERS IN REPLY TO RESPONDENTS' BRIEF.

Summary of Argument.

1. The writ of review is not a discretionary writ where it is sought to review a decision of respondent Commission.

2. An order denying a writ of review to review a decision of respondent Commission is a determination of the cause, within the meaning of Article VI, Section 24, of the California Constitution, requiring a written opinion. The minute order denying such a writ of review, without opinion, denied petitioners due process of law, contrary to the provisions of Amendment Fourteen to the Constitution of the United States.

3. Section 5952 of the Labor Code of California providing that the review of decisions of respondent Commission shall be "based on the entire record which shall be certified by the Commission" has been construed and applied in this case to allow affirmance of a decision of respondent Commission without review of the Commission's record, and without notice, hearing, or oral argument in any court of record, and thus construed and applied is in violation of the guarantees of due process and of equal protection of the laws contained in Amendment Fourteen to the Constitution of the United States.

ARGUMENT.

I.

The Writ of Review Is Not a Discretionary Writ Where It Is Sought to Review a Decision of Respondent Commission.

The cases of *Reilly v. Police Court*, 194 Cal. 375, 228 Pac. 860; *Donovan v. Board of Police Comm'rs.*, 32 Cal. App. 392, 163 Pac. 69, and *Fun. Dir. Ass'n v. Bd. of Fun. Dir.*, 22 Cal. 2d 104, 136 P. 2d 785, cited in respondent Commission's brief, do not deal with review of respondent Commission's decisions, or with any situation in which the right of judicial review by the appellate courts of California is guaranteed by the Constitution of California as a part of that State's due process of law.

Article XX, Section 21 of the California Constitution guarantees that *all* decisions of respondent Commission shall be subject to review by the appellate courts of California. (Pet. Op. Br. p. 17, and Appendix "A," p. 3.) The case of *Lavore v. Ind. Acc. Comm.*, 29 Cal. App. 2d 255, 84 P. 2d 176, held that the requirement of Article XX, Section 21, was met under the provision of the Labor Code in effect at that time by a mere review of the pleadings filed by the petitioner and by respondent Commission, and that neither the State Constitution nor the Labor Code as it stood at the time of that case required the review by the appellate court to be based on the actual record of the respondent Commission.

In 1951, Section 5952 of the Labor Code of California was amended to require the review of decisions

of respondent Commission to be "based on the entire record which shall be certified by the Commission." The principal purpose of the amendment was to correct the evils arising out of the doctrine of convenience enunciated in the *Lavore* case,* **which doctrine has resulted in a denial of the right of review to eighty percent of persons aggrieved by decisions of respondent Commission and seeking judicial review.** The *Lavore* case does not apply to the existing law.

II.

An Order Denying a Writ of Review to Review a Decision of Respondent Commission Is a Determination of the Cause, Within the Meaning of Article VI, Section 24, of the California Constitution, Requiring a Written Opinion. The Minute Order Denying the Writ of Review in This Case Without Opinion Denied Petitioners Due Process of Law, Contrary to the Provisions of Amendment Fourteen to the Constitution of the United States.

The case of *Fun. Dir. Assn. v. Bd. of Fun. Dir.*, 22 Cal. 2d 104, 136 P. 2d 785, relied upon by respondent Commission, actually gives full support to the foregoing proposition. The order under discussion in that case was a minute order of the California Supreme Court denying, without opinion, a peremptory writ of mandate. The ground upon which the Court stated that such an order was not a determination of the cause within the meaning of Article VI, Section 24, of the State Constitution, was that it was not a final determination on the merits such as would support the plea of *res judicata*. The Court,

*See excerpts from the legislative history of the amendment, Appendix hereof.

in its opinion, recognizes that in any case where the denial of a writ constitutes an adjudication on the merits such as would support a plea of *res judicata,* the order of denial constitutes a determination of the cause within the meaning of Article VI, Section 24, of the California Constitution.

This Court has expressly held that an order denying a writ of review to review a decision of respondent Commission is a decision on the merits, and will support the plea of *res judicata,* and is therefore the determination of a cause.

> *Madera Sugar Pine Co. v. Ind. Acc. Comm. of California,* 262 U. S. 499, 43 S. Ct. 604, 67 L. Ed. 1091;
>
> *Napa Valley Electric Co. v. Railroad Commission,* 251 U. S. 366, 40 S. Ct. 174, 61 L. Ed. 310.

In none of the foregoing cases, nor in any other case disclosed by diligent search, has the proposition here involved, been considered, to-wit, (a) that the requirement of Article VI, Section 24, of the Constitution of California is an integral part of due process of law in California, and (b) that the denial of a writ of review to review a decision of respondent Commission is a decision on the merits and a determination of a cause within the meaning of the aforesaid provision of the State Constitution, so that (c) it follows that the consistent failure of the appellate courts of California to write opinions in the determination of eighty percent of this single class of causes determined by them is both a denial of due process of law and a discriminatory denial of equal protection of the laws, violative of the guarantees of the Fourteenth Amendment to the Constitution of the United States.

III.

Section 5952 of the Labor Code of California Providing That the Review of Decisions of Respondent Commission Shall Be "Based on the Entire Record Which Shall Be Certified by the Commission" Has Been Construed and Applied in This Case to Allow Affirmance of a Decision of Respondent Commission Without Review of the Commission's Record, and Without Notice, Hearing, or Oral Argument in Any Court of Record, and Thus Construed and Applied Is in Violation of the Guarantees of Due Process and of Equal Protection of the Laws Contained in Amendment Fourteen to the Constitution of the United States.

The general rules stated by respondent Commission at pages 8 and 9 of its brief have no application to the instant case. The question here is *not* whether the State of California could, without violence to the requirements of Amendment Fourteen to the Constitution of the United States, repeal the requirement of its State Constitution that all decisions of respondent Commission shall be subject to review by the appellate courts of the State, or repeal the requirement of its State Constitution that the determination of all causes in the appellate courts of the State must be by a decision in writing, and must state the reasons therefor. **The question here is whether those requirements being an integral part of the process of law prescribed by the organic law of the State, the guarantees of due process of law and of equal protection of the laws contained in Amendment Fourteen**

to the Constitution of the United States are violated by a practice of the State appellate courts to deny review of respondent Commission's decisions in eighty percent of the cases where such review is sought, and to deny the same without notice, without oral argument, without examination of the record, and without opinion.

Under the procedure followed in this case by the District Court of Appeal and sought to be perpetuated by respondent Commission, it is quite apparent that the writ of review is *not* "available to all litigants appearing before the trial body (respondent Commission) who feel aggrieved by its decisions." It is equally apparent that equal opportunity is *not* "afforded all aggrieved litigants to invoke the jurisdiction of the appellate court to review the decision of respondent Industrial Accident Commission for alleged excesses of jurisdiction." Neither of those propositions is consistent with the denial of review of such decisions in the cases of four out of five litigants who are aggrieved by the decisions of respondent Commission. Nor is either of those propositions consistent with the fact that it has been necessary for your petitioners to bring this proceeding. Under the provisions of the Fourteenth Amendment to the Constitution of the United States both propositions *ought* to be true, but unfortunately are not true under the present practice which respondent commission seeks to perpetuate.

Conclusion.

It would seem to matter little whether the denial of constitutional rights results from an unconstitutional construction and application of State statutes, or from a simple failure and refusal of the California appellate courts to comply with the procedure required of them by the organic law of the State. In order that equal protection of the laws of California and due process under those laws may no longer be denied in a class of litigation vitally affecting the welfare of working people, their families, and their employers in the State of California, it is respectfully submitted that the writ of certiorari should issue herein, as prayed.

Respectfully submitted,

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APPENDIX.

A Committee of the State Bar of California appointed in 1950 to study the procedure followed in the review of Industrial Accident cases, commented in its report: "The Committee agrees that the rule of law now being followed by the District Courts of Appeal in deciding whether or not there is any evidence in the record to support the decision of the Industrial Accident Commission has, in effect, practically eliminated the value of review, particularly in view of the fact that writs are denied without opinion." (Volume XXV, No. 4, July-August, 1950, of the State Bar Journal of California, page 318.)

A supplementary report of the Senate Interim Committee on Workmen's Compensation Benefits of the California Legislature, made to the 1951 Session of the California Legislature, concluded as follows: "Persons appearing before the Industrial Accident Commission must have assurance that decisions will be fair and reasonable, and that in event of reliance upon judicial review of commission decisions, ALL evidence will be reviewed and evaluated. To provide such a guarantee, legislation is urgently needed to counteract conditions brought about by decisions of some (California) courts. Therefore, the committee recommends that the workmen's compensation act be amended, with respect to the scope of judicial review of commission decisions, to require that the courts empowered to review commission decisions shall consider the entire record certified to it by the commission, and sustain the orders, decisions and

awards of that body only if they are supported by substantial evidence in the light of the entire record."

On the foregoing recommendation of the Senate Interim Committee, Section 5952 of the Labor Code of California was amended in 1951 to require that the review of decisions of respondent Commission shall be "based upon the entire record which shall be certified by the Commission." Since its amendment, this section has not been construed in any decision of any appellate court.